

APPEAL NO. 021073
FILED JUNE 7, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 5, 2002. The hearing officer determined that the appellant (claimant) did not have disability as a result of the compensable injury of _____. The claimant appeals the determination, asserting factual and legal error. In its response, the respondent (self-insured) urges affirmance.

DECISION

Reversed and remanded.

The hearing officer erred in determining that the claimant did not have disability as a result of the compensable injury of _____. In the "Statement of the Evidence" portion of the decision, the hearing officer acknowledges that the claimant retired from her employment on May 30, 2000, and states:

Claimant argued her condition worsened as the months passed, until she finally became unable to work and had to retire, relying on the June 1, 2000 and September 12, 2000. . . letters from her treating physician. . . . In fact she already had retired. Maybe Claimant became unable to work at some point after she retired. The medical evidence does indicate her condition worsened. However, she stopped working because she retired, and she failed to prove she retired as a result of the compensable injury.

The claimant was employed as a teacher with the self-insured. The claimant testified that she had two years remaining on her employment contract and that she planned to continue working. However, on or about June 1, 2000, the claimant's treating doctor recommended that the claimant retire "due to her age and medical problems," including her compensable low back injury. The treating doctor signed letters to that effect on June 1, 2000, and September 12, 2000. The claimant indicated that she took her doctor's advice and retired in the summer months of 2000. The documentary evidence shows that the claimant signed her Notice of Separation from Employment (S-54) on June 28, 2000. The claimant testified that her retirement was made retroactive to May 30, 2000, the last day she worked for the self-insured. These facts are apparent from the S-54.

In Texas Workers' Compensation Commission Appeal No. 93791, decided October 18, 1993, we stated that a hearing officer is not required by the 1989 Act to provide a "Statement of the Evidence." Notwithstanding, a statement of evidence, if made, must reasonably reflect the evidentiary record. Texas Workers' Compensation Commission Appeal No. 013029, decided January 9, 2002. Because the hearing officer's disability determination is based on information inconsistent with the evidence in this proceeding, specifically a misapprehension that the claimant had already retired prior to June 1, 2000, when her treating doctor recommended that she retire, the hearing officer's decision is

reversed and the case is remanded for further consideration of the disability issue consistent with the evidence of record.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings pursuant to Section 410.202, as amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of time in which a request for appeal or a response must be filed.

The true corporate name of the self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Roy L. Warren
Appeals Judge